



REGIONAL TRANSPORTATION COMMISSION

Metropolitan Planning • Public Transportation & Operations • Engineering & Construction

Metropolitan Planning Organization of Washoe County, Nevada

January 18, 2019

AGENDA ITEM 3.10

TO: Regional Transportation Commission

FROM: Adam Spear
Director of Legal Services



Lee G. Gibson, AICP
Executive Director

SUBJECT: Legal Services Contract between the Regional Transportation Commission and Thompson Coburn, LLP

RECOMMENDATION

Authorize the Executive Director negotiate and execute a contract for specialized legal services with the law firm of Thompson Coburn, LLP.

SUMMARY

At the October 18, 2013, Board meeting, the Commission authorized the Executive Director to negotiate and execute a contract for specialized legal services with the law firm of Thompson Coburn, LLP. The contract was fully executed January 31, 2014, with the term of the contract set to expire on June 30, 2018, but was amended to extend the agreement through June 30, 2019.

Under that contract, Jane Sutter Starke and other Thompson Coburn attorneys have provided specialized legal services to the RTC on an as-needed basis, focusing on transit and construction matters, federal legal and regulatory requirements, and litigation matters. The relationship has been successful and beneficial to the RTC.

The Executive Director seeks authorization from the Commission to negotiate and execute a new three-year contract with Thompson Coburn, LLP, in substantially the form presented to the Commission, for Thompson Coburn, LLP to provide specialized legal services. This contract will replace the existing contract.

FISCAL IMPACT

Funding for this agreement is included annually in the RTC Board approved budget.

PREVIOUS ACTIONS BY BOARD

- June 15, 2018: Authorized the Executive Director to amend the contract for specialized legal services with the law firm of Thompson Coburn, LLP, in order to extend the term of the contract for up to one year.
- October 18, 2013: Authorized the Executive Director to negotiate and execute a contract for specialized legal services with the law firm of Thompson Coburn, LLP.
- July 16, 2010: Approved recommendation of an outside legal firm assuming the duties of Chief Legal Counsel due to the retirement of RTC's in-house General Counsel.

Attachment

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement for Professional Services (the "Agreement") is dated and effective as of February 1, 2019, by and between the Regional Transportation Commission of Washoe County, Nevada ("RTC"), and Thompson Coburn, LLP ("Firm").

WITNESSETH:

WHEREAS, RTC desires to retain CONSULTANT to perform specialized legal services pertaining to the development of various procurement and contract documents, to statutory, regulatory and grant requirements of the Federal Transit Administration (FTA) and other federal agencies, and other transactional and litigation matters, as may be requested by the RTC; and

WHEREAS, the Firm represents it has the technical expertise and experience to perform said legal services for the RTC; and

NOW, THEREFORE, RTC and the Firm, in consideration of the mutual covenants contained herein and other good and other valuable considerations do agree as follows:

A. SCOPE OF SERVICES

The Firm agrees to provide the legal services set forth in Exhibit A, as assigned by the RTC's Executive Director.

B. TERM

The term of this Agreement shall be from February 1, 2019, and shall continue through January 31, 2022, unless sooner terminated.

C. PAYMENTS TO FIRM

1. Compensation

RTC shall pay the Firm in accordance with the "Fee Schedule and Costs" attached as Exhibit B.

2. Invoices and Time of Payment

Invoices shall be submitted and payments made in the following manner:

a) Fees and costs shall be presented with a reasonable explanation as to what work was performed and the time to do that work. The invoice, together with documents to support direct costs (if requested by the RTC) may be submitted to the RTC on or before the 15th of each month following the month in which services were performed.

b) Invoices must be submitted to accountspayable@rtcwashoe.com. RTC's payment terms are 30 days after the receipt of the invoice. Simple interest will be paid at the rate of half a percent (0.5%) per month on all invoices approved by RTC that are not paid within thirty (30) days of receipt of the invoice.

c) The Firm shall maintain complete records supporting every request for payment which may become due. RTC shall have the right to receive and copy said records.

D. OTHER PROVISIONS

1. Time is of the Essence

It is understood and agreed that all times stated and referred to herein are of the essence. The times stated and referred to may be extended by mutual consent for such additional periods as the parties may approve. No extension of time shall be valid unless reduced to writing and signed by the authorized representative of each party.

2. Non-Transferability

This Agreement is for the Firm's professional services, and the Firm's rights and obligations hereunder may not be subcontracted or assigned without the prior written consent of RTC.

3. Hold Harmless

The Firm agrees to save and hold harmless and fully indemnify the RTC and all its employees or agents from and against all suits, claims, and demands, including attorney's fees, based upon any alleged damage to property or any alleged injury to persons (including death) which may occur or be alleged to have occurred by or on account of any negligent act or omission on the part of the Firm or any of its servants, employees, or agents in providing the services required by this Agreement.

4. Insurance

The Firm shall, at its own expense, self-insure or maintain in effect at all times during the performance of this Contract, at least the following coverage and limits of insurance which shall be maintained with insurers and under forms and policies reasonably satisfactory to the RTC.

a) Professional Liability, \$1,000,000 per claim; \$1,000,000 in aggregate.

b) Workmen's compensation and employer's liability.

The Firm shall furnish to the RTC a certificate from either Employers' Insurance Company of Nevada or a private company certifying that the Firm has complied with the workers' compensation provisions of the State of Nevada.

5. Relationship of Parties

The Firm is an independent contractor to the RTC under this Agreement. The Firm is free to contract to provide similar services for others while it is under contract to the RTC, so long as said services and advocacy are not in conflict with services being provided by the Firm to the RTC and confidentiality is maintained.

6. E-mail Communication

The RTC consents to and allows the Firm, and any attorneys or employees of the Firm, to initiate communications with the RTC and its employees via e-mail and to respond to e-mail communications from the RTC and its employees via e-mail. The foregoing consent extends to the initiation of electronic communications with, and the electronic response to communications from such others as the Firm deems necessary or appropriate in the performance of services hereunder. Consent includes the attachment of electronic copies of RTC documents to any electronic communications. The Firm will exercise extraordinary care to ensure it restricts its communications to the intended recipient and that confidentiality is maintained.

7. Termination and Withdrawal

The RTC may terminate this Agreement, in whole or in part, at any time by written notice to the Firm when it is in RTC's best interests. The Firm shall be paid for costs incurred and work performed up to the time of termination. If the Firm has any property in its possession belonging to the RTC, the Firm will account for the same, and dispose of it in the manner the RTC directs.

The Firm reserves the right to withdraw from representation of the RTC with the client's consent or for any reason consistent with the Nevada Supreme Court's rules of professional responsibility. This may include (without limitation) the failure to honor the terms of this Agreement, the failure to pay undisputed amounts billed in a timely manner, the failure to cooperate or follow the Firm's advice on a material matter, or any fact or circumstance that would reasonably impair an effective attorney-client relationship or which would render the Firm's continuing representation unlawful or unethical. The Firm will be entitled to be paid for services rendered and direct costs made or incurred on the RTC's behalf prior to the date of withdrawal.

8. Notices

Any notice or communication required or permitted to be served on a party hereto may be served by personal delivery to the office of the person or persons identified below. Service may also be made by registered or certified mail, by placing the notice or

communication in an envelope addressed as indicated below, and depositing said envelope in the United States Mail.

TO RTC: Lee G. Gibson, Executive Director
Regional Transportation Commission of Washoe
County
P.O. Box 30002
Reno, Nevada 89502
(775) 348-0400

TO FIRM: Jane Sutter Starke, Esq.
Thompson Coburn, LLP
1909 K Street, N.W. Suite 600
Washington, D.C. 20006
(202) 595-6924

The person to be served and the address shown above may be changed at any time by notice to the other party. Service shall be completed upon personal delivery or three (3) days following the time the notice is deposited by registered or certified mail.

9. Governing Law; Jurisdiction

The provisions of this Agreement shall be governed and construed in accordance with the laws of the State of Nevada and the parties hereto submit to the exclusive jurisdiction of the Justice and/or District Courts of the State of Nevada.

10. Severability

To the extent that any term or provision of this Agreement or the application thereof to any circumstance shall be deemed to be invalid or unenforceable, such term or provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions of this Agreement. The parties agree that a suitable and equitable term or provision shall be substituted therefore to carry out, insofar as may be valid and enforceable, the intent and purpose of the invalid or unenforceable term or provision.

11. Entire Agreement

There are no verbal agreements, representations, or understandings affecting this Agreement, and all negotiations, representations, and undertakings are set forth herein with the understanding that this Agreement constitutes the entire understanding by and between the parties.

12. Amendments

No alternation, amendment, or modification of this Agreement is effective unless it is in writing and signed by both parties.

13. Regulatory Compliance

The Firm agrees to comply with all federal, state and local government laws, regulations and ordinances in the performance of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date first above written.

APPROVED AS TO LEGALITY AND FORM

By: _____
Dale Ferguson
RTC Chief Counsel

REGIONAL TRANSPORTATION COMMISSION
OF WASHOE COUNTY

By: _____
Lee G. Gibson
Executive Director

THOMPSON COBURN, LLP

By: _____
Jane Sutter Starke, Esq.
Partner

EXHIBIT A

Scope of Services

1. Assist the RTC in the implementation of the public transit services Contracts, Paratransit Services Contract and the Fixed Route Operations and Maintenance Contract, including addressing legal and contractual issues that arise under those Contracts.
2. Assist the RTC in the development of procurement documents and in the preparation and drafting contract terms and conditions for the RTC's fixed route transit system, vehicle purchases and other procurements and contract documents as requested by the RTC.
3. Assist in the administration and implementation of procurement processes, as requested by the RTC, including industry outreach and reviews; responses to questions from prospective proposers; interviews; review and evaluation of proposals; and negotiation of contract terms and conditions.
4. Assist in vehicle, equipment, construction, Construction Manager at Risk (CMAR), and design build procurements, and in contract implementation issues as requested by the RTC, including representation in construction related litigation matters.
5. Advise and assist on Federal statutory, regulatory, and compliance issues and Federal Transit Administration (FTA) legal and grant requirements, including small starts project development issues, and FTA meetings.
6. Advise and assist the RTC on legislative issues, review of pending legislation, drafting of legislation, amendments, testimony, and correspondence, and congressional meetings.
7. Assist and provide subject matter expertise relating on litigation and other special legal matters and issues upon the RTC's request.
8. Assist with and general labor and workplace and workforce development issues.

EXHIBIT B

Fee Schedule and Costs

<u>Attorneys</u>	<u>Rate/Hour</u>
Jane Sutter Starke, Tony Anderson	\$495
Associates	\$320

NOTE: Other partners of the Consultant may provide legal services from time to time and will be billed at the hourly rate for Jane Sutter Starke and Tony Anderson unless otherwise agreed by the parties.

COSTS: Monthly billings will include reimbursement for reasonable costs incurred by CONSULTANT in the performance of services under this Agreement. Such costs include, but are not limited to, lodging and food while on travel; parking expenses; coach airfare; copying charges; express mail, and similar expenses. Administrative support and other costs related to any litigation matters will be negotiated on a per matter basis.